



STATE
OF CONNECTICUT
DEPARTMENT OF REVENUE SERVICES

SN 92(19) was revoked by
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92 Farmington Ave.
Hartford, CT 06105-3787

SPECIAL NOTICE

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**EFFECT OF Quill Corp. v. North Dakota ON THE COLLECTION OF USE TAX
BY RETAILERS WHO ENGAGE IN BUSINESS IN CONNECTICUT ONLY BY SELLING ITEMS
THROUGH MAIL ORDER CATALOGS WITH DELIVERY BY COMMON CARRIER**

o **PURPOSE:** This Special Notice describes the effect of the United States Supreme Court decision in Quill Corp. v. North Dakota, 504 U.S. ___, 119 L. Ed. 2d 91 (1992) on the requirement under Connecticut Sales and Use Taxes Act that certain out-of-state retailers collect Connecticut use tax on their sales to Connecticut retail customers.

o **BACKGROUND:** With the passage of 1989 Conn. Pub. Acts 41, §§1 and 2, the Connecticut General Assembly treated every person making retail sales from outside Connecticut to a destination within Connecticut and not maintaining a place of business in Connecticut but engaging in regular or systematic solicitation of sales of tangible personal property in Connecticut by means of print, radio or television media or by mail as a retailer required to collect Connecticut use tax on sales to a Connecticut destination, provided such person made 100 or more retail sales from outside Connecticut to destinations within Connecticut during a particular twelve-month period.

o **Quill Corp. v. North Dakota:** On May 26, 1992, the United States Supreme Court decided Quill Corp. v. North Dakota, 504 U.S. ___, 119 L. Ed. 2d 91 (1992). This case involved the constitutionality of a North Dakota statute requiring mail order companies that did no business in North Dakota other than selling items through mail order catalogs with delivery by common carrier to collect North Dakota use tax on their sales to a North Dakota destination. The United States Supreme Court held that a State statute, such as the North Dakota statute, requiring mail order companies to collect use tax when the companies have no physical contact with the State violates the Commerce Clause of the United States Constitution. The Court recognized, however, that the State statute did not violate the Due Process Clause of the United States Constitution and that, consequently, Congress could in the future enact legislation, under the power granted to it by the Commerce Clause, that would require mail order companies to collect the use tax.

o **ENFORCEMENT OF 1989 CONN. PUB. ACTS 41:** Given the fact that the North Dakota statute struck down in Quill Corp. v. North Dakota and 1989 Conn. Pub. Acts 41, §§1 and 2 are virtually identical and that the Connecticut statute, like its North Dakota counterpart, would require mail order companies to collect Connecticut use tax when the companies have no physical presence within Connecticut, the Department will not enforce 1989 Conn. Pub. Acts 41, §§1 and 2 by requiring out-of-state retailers that have merely an "economic presence" in Connecticut to collect Connecticut use tax. If Congress does enact legislation that would allow States to require out-of-state retailers with no physical presence within a State to collect and remit use tax without violating the Commerce Clause, the Department will begin to enforce 1989 Conn. Pub. Acts 41, §§1 and 2, to the extent its provisions are consistent with legislation enacted by Congress.

o CUSTOMERS OF MAIL ORDER COMPANIES ARE STILL SUBJECT TO USE TAX:

Quill Corp. v. North Dakota does not affect the liability of Connecticut customers of mail order companies to report and pay Connecticut use tax on their purchases of tangible personal property that is intended for use and used within Connecticut. The constitutionality of these requirements on retail customers is well-established. Connecticut customers purchasing tangible personal property for their personal use or consumption may report and pay Connecticut use tax on their purchases by filing a Form OP-186 (Connecticut Individual Use Tax Return) on or before April 15th for their purchases made during the preceding calendar year. Form OP-186 may be obtained by calling the Forms Unit of the Department at 203-297-4753. (Those Connecticut customers purchasing tangible personal property for use or consumption in carrying on a trade, occupation, business or profession may report and pay Connecticut use tax on their purchases by filing a Form OS-114 (Connecticut Sales and Use Tax Return) on or before the last day of the month following the end of their monthly or quarterly taxable period.) The Department anticipates that, for taxable years beginning on or after January 1, 1992, Connecticut customers will be permitted to report their Connecticut use tax on their Connecticut income tax return or, in the alternative, Form OP-186 will be distributed with the Connecticut income tax return. Persons failing to report and pay Connecticut use tax on their purchases are subject to civil and criminal penalties.

o VOLUNTARY REGISTRATION BY OUT-OF-STATE RETAILERS TO COLLECT USE TAX IS UNAFFECTED:

Retailers that merely have an "economic presence" in Connecticut are permitted by law to register voluntarily to collect Connecticut use tax on their sales to destinations within Connecticut. Their collection of Connecticut use tax from their Connecticut customers relieves those customers from reporting and paying Connecticut use tax on those purchases. Retailers wishing to register voluntarily to collect Connecticut use tax may file a Form REG-7 (Application for Authority to Collect Connecticut Use Tax). Registration to collect and remit Connecticut use tax is not deemed or regarded by the Department for any purpose whatsoever to be an admission by the retailer that it would be obligated to collect and remit use taxes absent voluntary registration, or that the retailer is or would be obligated to pay any corporate income, franchise or business or occupation or any other tax.

o FOR FURTHER INFORMATION, CALL TAXPAYER SERVICES AT (203) 566-7033 OR 1-800-382-9463 (IN-STATE). TDD/TT USERS CALL 203-297-4911.

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Sales and use taxes
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